ATTORNEY FOR APPELLANT:

MICHAEL L. LIPSKY
Valparaiso, Indiana

PRO SE APPELLEE:

DAVE MULLINS
Valparaiso, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MICHAEL CHATWELL,

Appellant-Defendant,

vs.

DAVE'S AUTOMOTIVE,

Appellee-Plaintiff.

No. 64A04-0711-CV-650

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable David L. Chidester, Judge
Cause No. 64D04-0707-SC-3550

July 2, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

After Dave's Automotive filed suit against Michael Chatwell in small claims court for an unpaid balance, Chatwell countersued for losses he allegedly sustained due to repair work on his car. The small claims court ruled in favor of Dave's Automotive on both claims. Chatwell now appeals the court's grant of judgment in favor of Dave's Automotive on Chatwell's counterclaim for the alleged loss of value to his car and the loss of an aftermarket car alarm system. Specifically, Chatwell argues that the court clearly erred by failing to properly consider his submitted evidence. Concluding that the small claims court's judgment is not clearly erroneous, we affirm.

Facts and Procedural History

In June 2005, Chatwell agreed to have his 1992 Corvette towed to Dave's Automotive from another repair shop to fix wiring issues. At that time, the car would not run. Although no agreement was reduced to writing, both parties agree that Chatwell wanted Dave's Automotive to restore his car to running order. When the car arrived at Dave's Automotive, the odometer could not be read because the digital dash was not functioning. Dave Mullins, the owner of Dave's Automotive, logged in the car at 100,000 miles due to an estimate provided by Chatwell.

In addition to wiring issues, Mullins suspected a problem with the car's computer system. During the course of the repair, which took almost a year, Mullins consulted various authorities in his efforts to diagnose and resolve the problem. He contacted General Motors, utilized contacts with a former employee to arrange sending the car to a General Motors training center in Hinsdale, Illinois, where two of the original designers of the system worked on it outside of their work hours, performed research on the internet, joined online Corvette forums to discuss the issue with other Corvette owners, talked to the inventor of the pass key system, and spoke with a person from Vette 2 Vette Corvette Salvage, who finally supplied him with the proper solution. This person informed him that, due to General Motors mixing up the computer numbers while upgrading the numbering system, he was using the wrong computer for the car. Tr. p. 12, 25. As soon as Mullins installed the correct computer, the car was able to start. When the digital dash turned on, the odometer read 126,541 miles. To explain this discrepancy, Mullins noted on the bill,

> Due to the extent of the repair on this particular vehicle the noted and documented mileage differs from the originall [sic] miles on the car due to the CCM replacement. . . . The ECM and E-PROM was also replaced from a prior repair, therefore, retrieving the original mileage was impossible.
> The current mileage when the vehicle left my shop was at or around 100K[.][1]
> I hereby certify this documentation for any future reference.
> David Mullins (President.Owner)
> Dave's Automotive Inc.

Def.'s Ex. 1 p. 1 (capitalization omitted).

In addition to the increased odometer reading, the car's aftermarket alarm system had been removed. Mullins removed it because the factory alarm system, which is part of the computer system, Tr. p. 11, was interfering with it, *id.* at 7. Additionally, three of the engineers working with Mullins advised against using any aftermarket alarm system on the car because the radio frequencies would disturb the running of the car. *Id.* at 14.

[1] We read this sentence as Mullins's acknowledgement that the odometer should have read approximately 100,000 miles.

Mullins gave Chatwell the opportunity to inspect the aftermarket alarm system once it was removed.[2] *Id.*

Dave's Automotive charged Chatwell $4,850.82 for the repair. Chatwell paid $3,900.00, leaving a balance of $950.82. On July 2, 2007, Dave's Automotive filed a small claims action for payment of the balance. On October 1, 2007, Chatwell filed a counterclaim asking for a $1,718.53 judgment for the alleged loss of value to the car due to the increased odometer reading, the loss of the aftermarket alarm system, and attorney's fees for the allegedly frivolous claim pursued by Dave's Automotive.

At trial, Chatwell introduced evidence that the value of his car had decreased as a result of the increased odometer reading. First, he stated that his insurance agent informed him that a letter from Mullins explaining the reason for the odometer increase would not be accepted in calculating the value of his car if there was a total loss. In his submitted evidence, Chatwell included a letter from an office manager at State Farm Insurance explaining what information the company would use to value his car in the event it was destroyed. The letter provided that the insurance company would look at the following:

1. Year, Make & Model
2. Odometer
3. Photos we have obtained with application of the vehicle.

Appellant's App. p. 90. Second, Chatwell referred to the Kelley Blue Book to demonstrate that a 1992 Corvette with 126,541 miles is $1,100 less valuable than a 1992 Corvette with 98,000 miles.

[2] Although Chatwell contests this fact, we remain mindful of our standard of review, which directs us to review the facts in the light most favorable to the small claims court's judgment.

Following trial, the small claims court issued a written explanation for its decision.[3] It found that the aftermarket alarm system removal was necessary to eliminate the interference between the factory and aftermarket alarm systems and that the necessity was "an unintended but consequential requirement in order to use the new computer module." *Id.* at 15. Regarding Chatwell's claim that the computer's odometer increase caused him damage, the court found it "too speculat[ive] to agree with the[] theory." *Id.* The court therefore entered judgment in favor of Dave's Automotive on both its claim and Chatwell's counterclaim. Chatwell now appeals the judgment in favor of Dave's Automotive on his counterclaim.

Discussion and Decision

Chatwell bore the burden of proof on his counterclaim at trial and did not prevail; therefore, he is appealing from a negative judgment. When a party appeals from a negative judgment, it must demonstrate that the trial court's decision is contrary to law; that is, the evidence points unerringly to a conclusion different from that reached by the trial court. *Hopper Res., Inc. v. Webster*, 878 N.E.2d 418, 422 (Ind. Ct. App. 2007) (citing *Bennett v. Broderick*, 858 N.E.2d 1044, 1048 (Ind. Ct. App. 2006), *trans. denied*), *reh'g denied*.

Small claims judgments are "subject to review as prescribed by relevant Indiana rules and statutes." *Lae v. Householder*, 789 N.E.2d 481, 483 (Ind. 2003) (quoting Ind.

[3] Small claims courts are not required to enter findings of fact. *Bowman v. Kitchel*, 644 N.E.2d 878, 879 (Ind. 1995). Here, in its written explanation, the small claims court provided that the "facts as set forth are **NOT** to be considered *Special Findings* but are for the convenience of the litigants in small claims court so that they may better understand the decision and judgment, which leads to a better understanding of the law and the administration of justice." Appellant's App. p. 14 (emphasis in original). We think this is admirable.

Small Claims Rule 11(A)). The Indiana Supreme Court has said that under Trial Rule 52(A), "the standard of appellate review for facts determined in a bench trial is clearly erroneous, and due regard is given to the opportunity of the trial court to judge the credibility of the witnesses." *Id.* We presume that the small claims court correctly applied the law. *Lowery v. Hous. Auth. of Terre Haute*, 826 N.E.2d 685, 688 (Ind. Ct. App. 2005). We will not reweigh the evidence, but instead consider only the evidence and reasonable inferences therefrom that support the small claims court's judgment. *Id.* A "deferential standard of review is particularly important in small claims actions, where trials are 'informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law.'" *City of Dunkirk Water & Sewage Dep't v. Hall*, 657 N.E.2d 115, 116 (Ind. 1995) (quoting Ind. Small Claims Rule 8(A)).

Chatwell raises two issues on appeal. First, he contends that the small claims court clearly erred by failing to properly consider his evidence regarding the loss of value to his car due to the increased odometer reading. Second, he contends that the small claims court clearly erred by failing to properly consider his evidence regarding the loss of his aftermarket alarm system.

I. Value of Car

Chatwell contends that the small claims court clearly erred by finding that the loss of value to his car due to the odometer increase is too speculative. We disagree.

Both parties agree that the odometer increase was caused by repair work and not miles driven. Chatwell argues that the quotes from the Kelley Blue Book and the exchanges with his insurance company establish that the increased odometer reading diminishes the value of his car. Again, we disagree. The quotes from the Kelley Blue Book are unpersuasive. Although the quotes estimate values based on mileage and other considerations, they do not take into account how the car would be valued in light of an inaccurate odometer.

Chatwell points to the letter from his insurance company, which specifies what factors it would consider when valuing the car upon total loss. However, this letter does not anticipate how the insurance company would proceed under allegations that the car's odometer is inaccurate. Moreover, although Chatwell testified at trial that his insurance agent told him that the company would not accept a letter from Mullins stating that the odometer had been changed, Tr. p. 17-18, Mullins's testimony reflects that State Farm Insurance has a history of accepting such letters, *id.* at 26. Chatwell essentially asks us to reweigh the evidence, which we cannot do. Our task is to consider only the evidence and reasonable inferences therefrom that support the small claims court's judgment.

Additionally, the Indiana Legislature has recognized that similar situations occur in which odometers are incapable of registering the accurate mileage after repair. *See* Ind. Code § 9-19-9-4 (requiring that when the service, repair, or replacement of an odometer causes an inaccurate reading, that odometer is to be adjusted to zero and a notice is to be affixed to the left door frame specifying the mileage before the repair and the date of the repair).

Given the dearth of evidence regarding how a car with an inaccurate odometer would be valued and the acknowledgement of the Indiana Legislature that repair work can cause incorrect odometer readings, we are convinced that the small claims court did not err in its determination that any loss in value is too speculative.

II. Aftermarket Alarm System

Chatwell also contends that the small claims court clearly erred by failing to properly consider his evidence regarding the loss of his aftermarket alarm system. We disagree. Both parties agreed at trial that Mullins did not receive affirmative permission from Chatwell to remove the aftermarket alarm system. Tr. p. 7, 21. However, during the nearly yearlong business relationship between the two, Chatwell's direction to Mullins, made with knowledge that something was wrong with the car's wiring, had simply been for Mullins to find a way to make the car run. Mullins contacted Chatwell every one to three weeks to keep him apprised of the progress. There is no indication that Chatwell wanted to sign off on every step that Mullins took to fix the car. Mullins explained at trial that the removal of the aftermarket alarm system was necessary to fix the car. Mullins made the removed system, which he described as a "wiring wad of garbage," *id.* at 14, available for Chatwell's inspection after its removal. There is no evidence that Chatwell expressed disapproval at the time. Instead, he continued his business relationship with Mullins while Mullins actively sought a solution for the car's computer problem. The small claims court did not clearly err in its consideration of Chatwell's evidence regarding the aftermarket alarm system.

The small claims court did not clearly err in ruling in favor of Mullins on Chatwell's counterclaim.

Affirmed.

MAY, J., and MATHIAS, J., concur.